

I. Restriction Requirement

The Office has required restriction to one of the following Groups of claims for prosecution in this case:

Group I - Claims 1-12 and 16-19, drawn to a composition;

Group II - Claims 13-15, drawn to a method of preparing the compositions;

and

Group III - Claim 20, drawn to a method of making up the eyes, hair, lips, and/or skin.

See Office Action at 2.

Applicants respectfully traverses the restriction requirement, however, to be fully responsive, Applicants elect, with traverse, the subject matter of Group I, comprising claims 1-12 and 16-19, drawn to a composition.

The instant application is a national stage filing under 35 U.S.C. § 371 and thus unity of invention practice applies to the application. The Examiner contends that Groups I-III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

. . . [t]he instant composition Claim 1 does not present a contribution over the prior art. Claim 1 lacks novelty step. Claim 1 is anticipated by U.S. Patent 6'132,745 ('745). See examples 1-16 for non-aqueous compositions having the emulsifier "searic acid." As a result, as currently presented, the instant composition claim does not share a special technical feature with the Group II or Group III and, as such, unity between the above Groups I-III is broken.

See Office Action at 2.

Applicants respectfully disagree with the Office's analysis of U.S. Patent

No. 6,132,745 and the conclusion that the patent anticipates the present invention.

Applicant reserves any further response until the issuance of an official action directed towards the patent and the elected subject matter.

Applicants submit that the Examiner's restriction requirement is improper and should be withdrawn.

II. Election of Species

In addition, the Examiner requires the election of a single species of emulsifier and identification of the claims encompassing that species. The Examiner notes that claims 1-2, 4-14, 16-17, and 19-20 are generic. See Office Action at 3.

The election of species requirement is respectfully traversed. However, to be fully responsive, Applicants provisionally elects, with traverse:

1) sodium dihydroxycetyl phosphate, with claims 1-20 reading on the elected species either literally or under the doctrine of equivalents.

Applicants respectfully traverse the election of species requirement on the basis that the Examiner has not shown that a serious burden exists to examine all of the alleged species. To make a proper requirement for an election of species, the Examiner must, *inter alia*, show that the search and examination of a claim would impose a serious burden on the Office because it embraces an unreasonable number of species M.P.E.P. § 803.02 (emphasis added). Here, the Examiner has provided no reasons or evidence on the record to substantiate the election of species requirement, let alone show examination of all the species would impose a serious burden.

Nevertheless, if the Examiner chooses to maintain the election of species

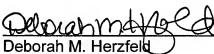
requirements, Applicants respectfully remind the Examiner of the duty of rejoinder, and of the duty to expand the search to non-elected species after the elected species has been found to be allowable. See M.P.E.P. § 803.02 and 35 U.S.C. § 121. For at least these reasons, the election of species requirements are improper and should be withdrawn.

III. Conclusion

In view of the foregoing remarks, Applicants respectfully request reconsideration and examination of the claims. Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

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